

By                     

HB. No. 2363

A BILL TO BE ENTITLED

AN ACT

relating to investigations and administrative hearings conducted for state licensing agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 110A, Revised Statutes, is amended by adding Article 6252-13a.1 to read as follows:

Art. 6252-13a.1. INVESTIGATIONS AND ADMINISTRATIVE HEARINGS FOR LICENSING AGENCIES

Part 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITION. In this article "state licensing agency" means an agency described by Part 4 of this article.

Part 2. DEPARTMENT OF INVESTIGATIVE SERVICES

Sec. 2.01. In this part:

(1) "Board" means the board of investigative services.

(2) "Department" means the Department of Investigative Services.

Sec. 2.02. DEPARTMENT. The Department of Investigative Services is a state agency.

Sec. 2.03. APPLICATION OF SUNSET ACT. The Department of Investigative Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the department is abolished and this part expires September 1, 2001.

Sec. 2.04. BOARD. (a) The department is under the

1 direction of the board of investigative services. The board is  
2 composed of three members appointed by the governor for staggered  
3 terms of six years with one member's term expiring on February 1 of  
4 each odd-numbered year.

5 (b) The board annually shall elect from among its members a  
6 presiding officer and assistant presiding officer.

7 (c) The board shall meet at the call of the presiding  
8 officer or as provided by board rule.

9 (d) A member of the board may not receive compensation for  
10 service on the board. A member is entitled to receive  
11 reimbursement, as provided by the General Appropriations Act, for  
12 actual and necessary expenses incurred in performing services as a  
13 member of the board.

14 Sec. 2.05. CHIEF INVESTIGATIONS OFFICER. (a) The board  
15 shall employ a person to act as the chief investigations officer of  
16 the department. The chief investigations officer is the  
17 administrative head of the department.

18 (b) To be eligible for appointment as the chief  
19 investigations officer, a person must have at least five years'  
20 experience in investigations.

21 Sec. 2.06. STAFF. The chief investigations officer shall  
22 employ staff as necessary to administer the functions of the  
23 department.

24 Sec. 2.07. FUNCTIONS. (a) The powers and duties of each  
25 state licensing agency relating to conducting an investigation for  
26 any purpose are transferred to the department.

27 (b) Each state licensing agency in need of investigative

1 services shall request the department to perform those services.

2 Sec. 2.08. RULES. The board may adopt rules necessary to  
3 administer the functions of the investigations department.

4 Part 3. DEPARTMENT OF ADMINISTRATIVE HEARINGS

5 Sec. 3.01. In this part:

6 (1) "Board" means the board of administrative  
7 hearings.

8 (2) "Department" means the Department of  
9 Administrative Hearings.

10 Sec. 3.02. DEPARTMENT. The Department of Administrative  
11 Hearings is a state agency.

12 Sec. 3.03. APPLICATION OF SUNSET ACT. The Department of  
13 Administrative Hearings is subject to Chapter 325, Government Code  
14 (Texas Sunset Act). Unless continued in existence as provided by  
15 that Act, the department is abolished and this part expires  
16 September 1, 2001.

17 Sec. 3.04. BOARD. (a) The department is under the  
18 direction of the board of administrative hearings. The board is  
19 composed of three members appointed by the governor for staggered  
20 terms of six years with one member's term expiring on February 1 of  
21 each odd-numbered year.

22 (b) The board annually shall elect from among its members a  
23 presiding officer and assistant presiding officer.

24 (c) The board shall meet at the call of the presiding  
25 officer or as provided by board rule.

26 (d) A member of the board may not receive compensation for  
27 service on the board. A member is entitled to receive

1 reimbursement, as provided by the General Appropriations Act, for  
2 actual and necessary expenses incurred in performing services as a  
3 member of the board.

4 Sec. 3.05. CHIEF ADMINISTRATIVE LAW JUDGE. (a) The board  
5 shall employ a person to act as the chief administrative law judge  
6 of the department. The chief administrative law judge is the  
7 administrative head of the department.

8 (b) To be eligible for employment as the chief  
9 administrative law judge, a person must be licensed to practice law  
10 in this state and must have at least five years' experience in  
11 conducting administrative hearings under the Administrative  
12 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas  
13 Civil Statutes).

14 Sec. 3.06. STAFF. (a) The chief administrative law judge  
15 shall maintain a staff of administrative law judges to conduct the  
16 hearings required under this part. To be eligible for employment  
17 as an administrative law judge, a person must be licensed to  
18 practice law in this state and meet any other requirements  
19 established by the board.

20 (b) The chief administrative law judge may employ other  
21 staff as necessary to administer the functions of the department.

22 Sec. 3.07. FUNCTIONS. (a) The powers and duties of each  
23 state licensing agency relating to conducting an administrative  
24 hearing for any purpose are transferred to the department. The  
25 department shall conduct all administrative hearings brought before  
26 a state licensing agency under the Administrative Procedure and  
27 Texas Register Act (Article 6252-13a, Vernon's Texas Civil

1     Statutes).

2             (b) An administrative law judge shall conduct the  
3     administrative hearings and may:

4                     (1) administer oaths;

5                     (2) take testimony;

6                     (3) rule on questions of evidence; and

7                     (4) make determinations of fact.

8             (c) If administrative law judges employed by the department  
9     are not available to hear all cases within reasonable times, the  
10    chief administrative law judge may contract with qualified  
11    individuals to serve as temporary administrative law judges.

12            Sec. 3.08. RULES. The board may adopt rules necessary to  
13    administer the functions of the department.

14                     Part 4. STATE LICENSING AGENCIES

15            Sec. 4.01. AGENCIES. The following agencies are subject to  
16    this article:

17                     (1) Texas Board of Architectural Examiners;

18                     (2) State Board of Barber Examiners;

19                     (3) The Texas Board of Chiropractic Examiners;

20                     (4) Texas Cosmetology Commission;

21                     (5) Court Reporters Certification Board;

22                     (6) State Board of Dental Examiners;

23                     (7) Texas State Board of Examiners of Dietitians;

24                     (8) Commission on Fire Protection Personnel Standards  
25    and Education;

26                     (9) Texas Funeral Service Commission;

27                     (10) Texas Board of Examiners in the Fitting and

1     Dispensing of Hearing Aids;

2             (11) Texas Board of Irrigators;

3             (12) Texas Board of Land Surveying;

4             (13) Commission on Law Enforcement Officer Standards  
5     and Education;

6             (14) Board of Examiners of Licensed State Land  
7     Surveyors;

8             (15) Texas State Board of Medical Examiners;

9             (16) Texas Motor Vehicle Commission;

10            (17) Board of Nurse Examiners;

11            (18) Texas Board of Licensure for Nursing Home  
12     Administrators;

13            (19) Texas Optometry Board;

14            (20) Texas State Board of Pharmacy;

15            (21) Texas Board of Physical Therapy Examiners;

16            (22) Texas State Board of Plumbing Examiners;

17            (23) Texas State Board of Podiatry Examiners;

18            (24) Polygraph Examiners Board;

19            (25) Texas Board of Private Investigators and Private  
20     Security Agencies;

21            (26) Texas State Board of Examiners of Professional  
22     Counselors;

23            (27) State Board of Registration for Professional  
24     Engineers;

25            (28) Texas State Board of Examiners of Psychologists;

26            (29) Texas State Board of Public Accountancy;

27            (30) Texas Real Estate Commission;

- 1                   (31) Council for Social Work Certification;  
2                   (32) State Committee of Examiners for Speech Pathology  
3 and Audiology;  
4                   (33) Texas Structural Pest Control Board;  
5                   (34) Board of Tax Professional Examiners;  
6                   (35) State Board of Veterinary Medical Examiners; and  
7                   (36) Board of Vocational Nurse Examiners.

8           SECTION 2.   Section 3(1), Administrative Procedure and Texas  
9 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is  
10 amended to read as follows:

11                   (1) "Agency" means any state board, commission,  
12 department, or officer having statewide jurisdiction, other than an  
13 agency wholly financed by federal funds, the legislature, the  
14 courts, the Industrial Accident Board, and institutions of higher  
15 education, that makes rules or determines contested cases. For the  
16 purpose of determining contested cases, the term includes the  
17 Department of Administrative Hearings.

18           SECTION 3.   Section 13, Administrative Procedure and Texas  
19 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is  
20 amended by adding Subsection (j) to read as follows:

21                   (j) An administrative law judge who acts under Article  
22 6252-13a.1, Revised Statutes, and conducts the hearing shall  
23 consider any applicable agency rules or policies in conducting the  
24 hearing, but may not be supervised by the agency that is a party to  
25 the hearing. The agency shall provide the administrative law judge  
26 with a written statement of the applicable rules or policies. An  
27 agency may not attempt to influence the finding of facts or the

1 application of the law in any contested case other than by proper  
2 evidence and legal argument. An agency head may change a finding  
3 made by the administrative law judge only for reasons of policy,  
4 and must state in writing the reason and legal basis for the  
5 change.

6 SECTION 4. (a) This Act takes effect September 1, 1989.

7 (b) Any amount appropriated to a state licensing agency to  
8 pay for costs incurred in conducting investigations is transferred  
9 to the Department of Investigative Services on the effective date  
10 of this Act. Any amount appropriated to a state licensing agency  
11 to pay for costs incurred in conducting administrative hearings is  
12 transferred to the Department of Administrative Hearings on the  
13 effective date of this Act. The Legislative Budget Board shall  
14 determine the amounts under this subsection and report them to the  
15 comptroller of public accounts.

16 (c) The Department of Investigative Services shall begin to  
17 conduct investigations and the Department of Administrative  
18 Hearings shall begin to conduct administrative hearings not later  
19 than January 1, 1990. Before that date the investigations  
20 department and the hearings department may contract with state  
21 agencies to conduct the investigations or hearings.

22 SECTION 5. The importance of this legislation and the  
23 crowded condition of the calendars in both houses create an  
24 emergency and an imperative public necessity that the  
25 constitutional rule requiring bills to be read on three several  
26 days in each house be suspended, and this rule is hereby suspended.



H. B. No.

2363

By

Albert

A BILL TO BE ENTITLED

AN ACT

relating to investigations and administrative hearings conducted  
for state licensing agencies.

MAR 9 1989

1. Filed with the Chief Clerk.

MAR 22 1989

2. Read first time and Referred to Committee on

State Affairs

3. Reported favorably (as amended)  
(as substituted) and sent to Printer at

4. Printed and distributed at

5. Sent to Committee on Calendars at

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)  
(Record Vote of years, nays, present, not voting).

7. Motion to reconsider and table the vote by which H.B. was ordered  
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of years,  
nays, and present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed  
to suspend) by a four-fifths vote of years, nays, and  
present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote  
of years, nays, present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. was finally passed  
prevailed (failed) by a (Non-Record Vote) (Record Vote of years,  
nays, and present, not voting).

12. Ordered Engrossed at

13. Engrossed.

14. Returned to Chief Clerk at

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read  
first time.

20. Ordered not printed.

21. Regular order of business suspended by  
(a viva voce vote.)  
years, nays.)

\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
( \_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION: OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments,  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_